COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION **CASE NO. PUE980813**

Ex Parte: In the matter of considering an electricity retail access pilot program – Virginia Electric and Power Company

REPORT OF ALEXANDER F. SKIRPAN, JR., HEARING EXAMINER

November 30, 1999

Establishment of an electric retail access pilot program for Virginia Power represents an important incremental step toward the restructuring of the electric utility industry within the Commonwealth. In this case, the Commission will attempt to establish a workable pilot program that will permit some of Virginia Power's retail customers to choose an alternative electric energy provider. The principal areas of dispute include the size of the pilot program and the level of the "wires charge."

HISTORY OF THE CASE

On March 20, 1998, the Commission established an investigation to examine various aspects of the restructuring of the electric utility industry in Virginia.[1] As part of this investigation, the Commission directed Virginia Electric and Power Company ("Virginia Power") to investigate and to propose a retail access pilot program. On November 2, 1998, Virginia Power filed the details, objectives and characteristics of its proposed retail access pilot program ("Pilot Program").[2] On December 3, 1998, the Commission established two new proceedings related to Virginia Power's proposed Pilot Program. First, in Case No. PUE980812, the Commission began a proceeding to adopt generally applicable interim rules governing both natural gas and electricity retail access pilot programs. Second, the Commission instituted this proceeding to address issues specific to Virginia Power's proposed Pilot Program such as the size of the Pilot Program, rate unbundling, and the effects of the Pilot Program on tariffs. Accordingly, on December 3, 1998, the Commission issued its Order Establishing Procedural Schedule in this proceeding in which it directed the Company to give notice, established a procedural schedule, assigned the matter to a Hearing Examiner, and scheduled the matter for public hearing on June 29, 1999.

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[1] *Commonwealth of Virginia At the relation of the State Corporation Commission, Ex Parte: In the matter of requiring reports and actions related to independent system operators, regional power exchanges and retail access pilot programs*, Order Establishing Investigation, Case No. PUE980138, 1998 S.C.C. Ann. Rep. 402.

[2] Exhibit Company-1.

On April 27, 1999, Virginia Power filed a motion in which it requested leave to supplement its prefiled testimony to withdraw Section XI – "Unresolved Issues Requiring Legislative Guidance" of its Pilot Program. The General Assembly's enactment of the Virginia Electric Utility Restructuring Act ("Restructuring Act")[3] and Senate Bill 1286, regarding electric utility taxation, provided the impetus for Virginia Power's motion. On May 6, 1999, a Hearing Examiner's Ruling granted Virginia Power's motion, established a new procedural schedule, and rescheduled the evidentiary hearing to September 8, 1999.

In addition to Virginia Power, Staff and the Attorney General, several other parties filed notices of protest and protests. The chart below provides a listing by party and the dates on which they filed their notice of protest and protest.

Name of Party	**Notice of Protest Filing Date**	**Protest Filing Date**
A&N Electric Cooperative; BARC Electric Cooperative; Community Electric Cooperative; Graig-Botetourt Electric Cooperative; Mecklenburg Electric Cooperative; Northern Neck Electric Cooperative, Inc.; Northern Virginia Electric Cooperative; Powell Valley Electric Cooperative; Prince George Electric Cooperative; Rappahannock Electric Cooperative; Shenandoah Valley Electric Cooperative; Southside Electric Cooperative, Inc.; Old Dominion Electric Cooperative; and Virginia, Maryland & Delaware Association of Electric Cooperatives ("Virginia Cooperatives")	January 29, 1999	July 6, 1999
Apartment and Office Building Association of Metropolitan Washington ("AOBA")	December 18, 1998	July 16, 1999
Appalachian Power Company, d/b/a American Electric Power ("AEP")	June 24, 1999	July 16, 1999
Brayden Automation Corporation	January 4, 1999	July 16, 1999
Energy Consultants, Inc.	January 4, 1999	July 16, 1999
Enron Energy Services	May 17, 1999	Not Applicable
Horizon Energy Company d/b/a Exelon Energy and Exelon Management & Consulting ("Exelon")	April 19, 1999	Not Applicable
Michel A. King	January 29, 1999	July 16, 1999
National Energy Marketers Association	January 29, 1999	Not Applicable
Philip Morris USA	January 21, 1999	Not Applicable
Picus LLC	July 16, 1999	July 16, 1999
Southern Environmental Law Center	January 29, 1999	May 10, 1999

[3] Va. Code §§ 56-576 to 56-595.

Name of Party	Notice of Protest Filing Date	Protest Filing Date
The Potomac Edison Company, d/b/a Allegheny Power ("Allegheny Power")	January 12, 1999	April 30, 1999
Virginia Committee for Fair Utility Rates ("Virginia Committee")[4]	January 15, 1999	May 10, 1999
Washington Gas Light Company ("Washington Gas")	January 21, 1999	July 16, 1999

On September 8, 1999, an evidentiary hearing was convened for receiving evidence on Virginia Power's Pilot Program. Representing Virginia Power at this hearing were Richard D. Gary, Esquire, Kodwo Ghartey-Tagoe, Esquire, and Karen L. Bell, Esquire. Donald R. Hayes, Esquire, appeared on behalf of Washington Gas. Anthony Gambardella, Esquire, appeared on behalf of AEP. Marleen L. Brooks, Esquire, appeared on behalf of Allegheny Power. Edward L. Petrini, Esquire, appeared on behalf of the Virginia Committee. Counsel for Energy Consultants, Inc., Brayden Automation Corporation, and Picus, LLC was Kenworth E. Lion, Jr., Esquire. On the second day of the hearing, Timothy B. Hyland, Esquire, appeared on behalf of AOBA. Michel A. King appeared *pro se.* John F. Dudley, Esquire, appeared on behalf of the Attorney General. C. Renae Carter, Esquire, and William H. Chambliss, Esquire, appeared on behalf of the Staff. Filed with this Report is the transcript from the hearing.

SUMMARY OF THE RECORD

As originally proposed by Virginia Power, the purpose of its Pilot Program was "to gain hands-on experience and to gather specific information on the technical and administrative aspects of implementing retail access."[5] Virginia Power envisioned its Pilot Program as a bridge to full retail competition and as an opportunity to learn about the processes, systems, and infrastructure required to deliver full retail competition to its customers.[6]

To accomplish these purposes, Virginia Power designed its Pilot Program to offer retail choice for approximately 24,000 customers under two separate plans.[7] Pursuant to Plan A, 19,000 individual and 5,000 aggregated residential and small commercial customers in the Greater Richmond Area[8] would be permitted to shop for a competitive electricity supplier.[9] Plan

[4] The Virginia Committee is comprised of the following members: AlliedSignal Inc.; Amoco Oil Company; Anheuser-Busch, Incorporated; Canon Virginia, Inc.; DuPont Polyester Films; E. I. Du Pont de Nemours & Company, Inc.; Ford Motor Company; General Motors Corporation; Nabisco Brands, Inc.; National Welders Supply (Chesterfield); Newport News Shipbuilding and Dry Dock, Co.; Praxair, Inc.; Reynolds Metals Company; Siemens Automotive, L.P.; Stone Container Corporation; and Union Camp Corporation.
[5] Exhibit Company-1, at 5.
[6] *Id.*
[7] *Id.* at 7-8.
[8] More specifically, the City of Richmond, Town of Ashland, and the Counties of Chesterfield, Henrico, and Hanover. *Id.* at 7.
[9] Exhibit Company-1, at 7-8.

B was for intermediate and large commercial and industrial customers.[10] Virginia Power would make Plan B available throughout its service territory, but limit participation to 170 million kWh and 25 MW of peak load.[11]

As part of its initial proposal, Virginia Power identified several issues for resolution by the General Assembly. According to Virginia Power, these issues included:

1. Recovery of just and reasonable stranded costs by incumbent electric utilities.

2. Changes in electric utility taxation to ensure a "level playing field" for all competitive energy suppliers and to guard against the undue impact of electric utility restructuring on government revenues.

3. The rules under which competitive suppliers must do business in the Commonwealth.

4. Various consumer education and protection issues in the new and evolving electric utility business.[12]

On January 12, 1999, Virginia Power filed testimony in support of its proposed Pilot Program. David F. Koogler, director of regulation and competition for Virginia Power, adopted most of Virginia Power's Pilot Program, including its objectives and limitations, design, education and awareness, supplier participation guidelines, customer selection, metering, and program reporting and evaluation.[13] Andrew J. Evans, manager-rates with Virginia Power sponsored the portions of Virginia Power's Pilot Program related to: (i) utility tariffs, terms and conditions, and (ii) retail transmission access, scheduling and settlement.[14]

On April 27, 1999, Virginia Power filed additional supplemental testimony for two witnesses to update its Pilot Program to reflect adoption by the General Assembly of the Restructuring Act and electric utility taxation. More specifically, David Koogler testified concerning the recovery of stranded costs during the Pilot Program and presented Virginia Power's proposed method for calculating market prices and determining wires charges.[15] Mr. Koogler also clarified Virginia Power's positions regarding its Billing, Collection and Payment Service Charge, and its proposal related to customer switching.[16] Andrew Evans provided support for Virginia Power's requested charges for suppliers and customers and discussed the design of Virginia Power's proposed unbundled rates and wires charges.[17]

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[10] *Id.*
[11] *Id.* at 8.
[12] *Id.* at 6, 82.
[13] Exhibit DFK-2.
[14] Exhibit AJE-6.
[15] Exhibit DFK-3, 2-10.
[16] *Id.* at 10-11.
[17] Exhibit AJE-7.

On July 16, 1999, Washington Gas filed the testimony of Paul H. Raab, an independent economic consultant. Mr. Raab provided alternative unbundled rates and wires charges for Virginia Power.[18] Further, Mr. Raab advocated the expansion of the Pilot Program to include a larger geographic area and a larger number of customers.[19] Finally, Mr. Raab recommended the unbundling and competitive provision of certain revenue cycle services, such as billing.[20]

On July 16, 1999, Energy Consultants, Inc., Brayden Automation Corporation, and Picus, LLC, filed the testimony of William K. Kee, Jr., president of Energy Consultants, Inc. Mr. Kee recommended that the Commission require competing utilities to fund energy programs and permit third parties to resell the electricity of incumbent electric utilities.[21]

On July 16, 1999, AOBA filed the testimony of Bruce R. Oliver, president of Revilo Hill Associates, Inc. Mr. Oliver recommended that the Commission take three actions concerning the Pilot Program. First, the Commission should increase the size of the Pilot Program, permitting from 5% to 10% of the customers served under rate schedules GS-3 and GS-4 to participate.[22] Second, the Commission should deny Virginia Power's request for recovery of stranded costs.[23] Third, the Commission should reject market price estimates based on historic PJM Interconnection, L.L.C.'s ("PJM") data.[24]

On July 16, 1999, the Virginia Committee filed the testimony of Jeffry Pollock, a principal with the firm of Brubaker & Associates, Inc. Mr. Pollock recommended that the size of the Pilot Program be expanded to include at least 5% of Virginia Power's jurisdictional load, and that Pilot Program participants should not be required to terminate service under nontraditional rate schedules.[25] In addition, Mr. Pollock maintained that Virginia Power overstated its proposed wires charges by failing to consider long-term market prices for markets accessible to Virginia Power.[26] Furthermore, Mr. Pollock urged the Commission to permit Pilot Program participants the right to self-supply all ancillary services permitted under Virginia Power's Open Access Transmission Tariff ("OATT") filed with the Federal Energy Regulatory Commission ("FERC"), and to self-supply metering and billing services.[27] Finally, Mr. Pollock agreed with Virginia Power that unbundled rates for the Pilot Program should be designed to maintain revenue neutrality and that any difference between Virginia Power's FERC OATT and its unbundled Virginia retail transmission rates should be reflected as an adjustment to the other unbundled charges assessed to Pilot Program participants.[28]

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[18] Exhibit PHR-9, at 6-10.
[19] *Id.* at 10-23.
[20] *Id.* at 23-24.
[21] Exhibit WDK-11.
[22] Exhibit BRO-17, at 7-15.
[23] *Id.* at 15-18.
[24] *Id.* at 18-23.
[25] Exhibit JP-18, at 4-10, 25-27.
[26] *Id.* at 16-25.
[27] *Id.* at 28-33.
[28] *Id.* at 10-16.

Also on July 16, 1999, the Attorney General filed the testimony of Don S. Norwood in which he made seven specific findings and recommendations. First, regarding unbundling and projected market prices, Mr. Norwood recommended establishing a single "Price to Beat" within each customer class.[29] Second, Mr. Norwood opposed recovery of the difference between Virginia Power's FERC OATT rate and its unbundled Virginia retail transmission rates.[30] Third, Mr. Norwood adjusted Virginia Power's projected market prices to reflect "retail" market prices and "future" wholesale price indices.[31] Fourth, Mr. Norwood argued for expanding the size of the Pilot Program to 5% of the annual sales for each class, plus an additional 2% of sales to residential and small commercial classes as a minimum set aside for aggregation.[32] Fifth, Mr. Norwood agreed with Virginia Power that competition for metering and billing services should not be allowed during the Pilot Program.[33] Finally, Mr. Norwood contended that Virginia Power should be required to install interval meters for a representative sample of small customers during the Pilot Program to develop hourly load profile information for each rate class.[34]

On August 2, 1999, Virginia Power filed further supplemental testimony for David F. Koogler. The purpose of Mr. Koogler's supplemental testimony was to inform the Commission of the work of the Consumer Education Workgroup, which collaboratively developed a plan to educate consumers about electric competition and customer choice.[35]

On August 16, 1999, the Staff filed the testimony of three witnesses. David R. Eichenlaub, assistant director of the Commission's Division of Economics and Finance, addressed the status of the proposed interim rules regarding retail access pilot programs, consumer education, electronic data interchange, and reporting and monitoring of Virginia Power's Pilot Program.[36] Among Mr. Eichenlaub's specific recommendations were that the Commission should adopt the consumer education plan developed by the Consumer Education Workgroup and that Virginia Power provide semi-annual reports to the Commission regarding competitive markets and containing such information as may be directed by Staff.[37]

Rosemary M. Henderson, senior utilities specialist in the Commission's Division of Energy Regulation, addressed retail rate unbundling and the terms and conditions for service proposed by Virginia Power for its Pilot Program.[38] Ms. Henderson outlined, but did not take issue with, several adjustments made by Virginia Power to its cost of service study, from which it developed its unbundled rates in this case.[39] Further, Ms. Henderson discussed each of the

[29] Exhibit DSN-12, at 5-6, 20-24.
[30] *Id.* at 6, 24-28.
[31] *Id.* at 6-7, 29-50.
[32] *Id.* at 7, 51-55.
[33] *Id.* at 8, 55-57.
[34] *Id.* at 8, 59-61.
[35] Exhibit DFK-4.
[36] Exhibit DRE-13.
[37] *Id.* at 8.
[38] Exhibit RMH-14.
[39] *Id.* at 1-4.

new fees Virginia Power incorporated into its Pilot Program and questioned whether such fees were permitted under Virginia Power's current rate caps.[40]

Howard M. Spinner, senior utilities specialist for the Commission's Division of Energy Regulation, focused on six issues: (i) overall pilot objectives, (ii) pilot size, availability and eligibility, (iii) market price projections, (iv) wires charge determination, (v) load profiling, balancing and settlement, and (vi) metering and billing.[41] Specifically, Mr. Spinner recommended that the Pilot Program size be enlarged to include at least 5% of Virginia Power's customers and load.[42] In addition, Mr. Spinner urged the Commission to expand Virginia Power's market price projection method to include information from other relevant trading hubs.[43] Further, Mr. Spinner proposed that the Commission implement residential wires charges structured to provide customers with only one implied shopping credit per season rather than two per season as proposed by Virginia Power.[44] Finally, Mr. Spinner agreed with Virginia Power's proposals for load profiling, balancing and settlement, and metering and billing.[45]

On August 27, 1999, Virginia Power filed the rebuttal testimony of David Koogler and Andrew Evans. Mr. Koogler responded to the testimony of Staff, the Attorney General, Washington Gas, the Virginia Committee, and AOBA concerning the size and scope of the Pilot Program, market price determination, customer aggregation, competitive metering and billing, terms and conditions, interim rules, electronic data transfer, and reporting requirements.[46] In his rebuttal, Mr. Evans dealt with the structure of wires charges, FERC transmission rates, load profiles, non-traditional rate schedules, the self-supply of ancillary services, terms and conditions, energy service provider and customer charges, the FERC OATT, and the effect of the Pilot Program on the fuel factor.

At the hearing, Virginia Power, Staff, Michel King, and Washington Gas offered a Stipulation, which proposed a resolution for two key issues in this proceeding.[47] First, the Stipulation recommended expanding Virginia Power's Pilot Program to encompass 71,175 customers or 366.5 MW of cumulative coincident load.[48] Thus, under the Stipulation, approximately 3.4% of Virginia Power's jurisdictional customers may choose an alternative energy supplier.[49] This more than triples Virginia Power's original proposal, which limited participation to 1% of its jurisdictional customers.[50] Second, the Stipulation detailed a methodology for determining market prices. Under the Stipulation, market prices would be based on actual sales of power into the PJM market, adjusted for market prices achieved at Cinergy or PJM West hubs, net of transmission and ancillary service costs and transmission

[40] *Id.* at 5-10.
[41] Exhibit HMS-15.
[42] *Id.* at 10-15, 61.
[43] *Id.* at 15-44, 62.
[44] *Id.* at 45-56, 62.
[45] *Id.* at 56-61, 62-63.
[46] Exhibit DFK-19.
[47] Exhibit DFK-5; Gary, Tr. at 14; King, Tr. at 22; Carter, Tr. at 33; Hayes, Tr. at 111.
[48] Exhibit DFK-5, at Attachment 1.
[49] Koogler, Tr. at 43-44.
[50] *Id.*

losses.[51] In addition, the Stipulation called for Virginia Power and Staff jointly to determine market prices ninety days before implementation of each phase of the Pilot Program.[52] In this regard, the Stipulation reserved the right for Virginia Power or Staff to recommend an alternative methodology for determining market prices for Phase II of the Pilot Program.[53] Finally, the Stipulation provided:

> If the Commission does not intend to approve all aspects of this Stipulation, then the Stipulating Participants respectfully request that the Commission (a) notify them of such intention and (b) allow them ten (10) days to attempt to reach a modified stipulation that addresses the Commission's concerns. If no such modified stipulation is reached after ten (10) days, then the Stipulating Participants, or any of them, may withdraw their support of this Stipulation and request a hearing on any issues raised in the above-captioned proceeding.[54]

DISCUSSION

The discussion will focus first on the proposed Stipulation, and then on each of the remaining issues.

PROPOSED STIPULATION

The Attorney General, Virginia Committee, AOBA, AEP, Brayden Automation Corporation, Energy Consultants, Inc., Picus LLC, and Allegheny Power do not support adoption of the Stipulation. Many of these parties continue to argue against the recommendations contained in the Stipulation. Indeed, the record shows that all parties, including Virginia Power and Staff, actively litigated and briefed each of the issues addressed by the Stipulation. Thus, even if the Commission decides not to approve all aspects of the Stipulation, there is no need for further hearings in this case. Moreover, the continuing opposition to the Stipulation requires separate examination of each issue addressed by the Stipulation.

1. Pilot Program Size

Under the Stipulation, Virginia Power, Staff, Michel King, and Washington Gas (hereafter referred to as the "Stipulating Parties") agree to increase the size of the Pilot Program for both Plan A and Plan B. As originally proposed, Plan A covered up to 23,720 or 7.4% of the residential and small non-residential customers (GS-1, GS-2, and Church classes) living in the Greater Richmond Area.[55] Plan B dealt with intermediate and large commercial and industrial customers (GS-3 and GS-4 classes) throughout Virginia Power's service territory.[56] However,

[51] Exhibit DFK-5, at ¶¶ 6-7, Attachment 2-3.
[52] *Id*. at ¶ 10.
[53] *Id.*
[54] *Id.* at ¶ 12.
[55] Exhibit Company-1, at 30.
[56] *Id*. at 30-34.

Virginia Power limited participation for GS-3 customers to 90 million kWh, with no single participant permitted to take more than 30 million kWh.[57] Virginia Power limited GS-4 customers to 80 million kWh, with no single participant permitted to take more than 40 million kWh.[58]

The Stipulation increases participation levels through two phases to cover approximately 3.4% of Virginia Power's jurisdictional customers. In Phase I, or the initiation of the Pilot Program five months from the Commission's final order in this case, the Stipulation increases Virginia Power's original recommended participation level for Plans A and B by 50%.[59] In Phase II, scheduled to begin on January 1, 2001, the Stipulation further doubles participation.[60] For Plan A, the Stipulation adds a second geographic area in northern Virginia.[61] For Plan B, the Stipulation doubles participation limits. The chart below summarizes the participation limits of Virginia Power's original proposal, and Phase I and Phase II of the Stipulation.[62]

	Virginia Power's Original Proposal	**Stipulation Phase I**	**Stipulation Phase II**
Plan A	**(No. of Customers)**	**(No. of Customers)[63]**	**(No. of Customers)[64]**
Residential	17,000	25,500	51,000
Aggregation	5,000	7,500	15,000
GS-1	1,400	2,100	4,200
GS-2	300	450	900
Churches	20	30	60
Total Plan A	23,720	35,580	71,160
Plan B	**(Competitive kWh)**	**(Competitive kWh)**	**(Competitive kWh)**
GS-3	90,000,000	135,000,000	270,000,000
GS-4	80,000,000	120,000,000	240,000,000
Total Plan B	170,000,000	255,000,000	510,000,000

The Attorney General opposes the Stipulation, recommending that the size of the Pilot Program be increased to include 5% of the annual sales for each class, plus another 2% of annual sales as a set aside for Plan A aggregation.[65] Moreover, the Attorney General advocates that Virginia Power implement both Phase I and Phase II of the Pilot Program five months after the

[57] *Id.* at 31.
[58] *Id.*
[59] Exhibit DFK-5, at ¶ 3.
[60] *Id.* at ¶ 4.
[61] *Id.*
[62] *Id.* at Attachment 1.
[63] The number of customers does not reflect the provisions of Stipulation ¶ 5, which increases participation by an additional 5%, or 1,779 customers, if the Pilot Program is oversubscribed.
[64] The number of customers does not reflect the provisions of Stipulation ¶ 5, which increases participation by an additional 5%, or 3,558 customers, if the Pilot Program is oversubscribed.
[65] Attorney General Brief at 20-23.

final order in this case.[66] Likewise, the Virginia Committee maintains that the size of the Pilot Program should be at least 5%.[67] AOBA, also, urges a Pilot Program of at least 5% participation, with retail choice available to 10% of the GS-3 and GS-4 customers.[68]

The principle argument made by each party seeking a larger Pilot Program was that a larger size was necessary to attract competitive suppliers to the Commonwealth.[69] They contend that competitive suppliers are unlikely to commit resources to pursue a small number of customers.[70] With retail access progressing rapidly in many states, including Pennsylvania and Maryland, competitive suppliers may no longer be willing to lose money in a limited pilot program in hopes of gaining insight into the retail market.[71] Thus, to increase the likelihood of competitive supplier participation, the Attorney General, Virginia Committee, and AOBA recommend increasing the proposed size of the Pilot Program.

In his direct testimony, Staff witness Spinner also proposed increasing the size of the Pilot Program to at least 5% participation.[72] Mr. Spinner based his proposal on the same concerns raised by the Attorney General and other parties, *i.e.* that competitive suppliers already have learned about retail markets in other jurisdictions and may be unwilling to expend resources to acquire customers in Virginia Power's Pilot Program.[73] Nonetheless, Staff now supports the 3.4% participation level of the Stipulation.[74] On brief, the Staff asserts that the stipulated size of the Pilot Program is adequate.[75] "The proposed pilot size is small enough that the technical, mechanical, and physical problems of electronic data interchange and actual flow of generation supply may be managed effectively."[76]

Virginia Power witness Koogler characterized the 3.4% participation level of the Stipulation as "walk[ing] the fine line of growing the pilot to a size that would be attractive to suppliers and at the same time keeping it manageable so that we can avoid administrative pitfalls."[77] Mr. Koogler stated that Virginia Power consciously targeted the customer limits of the Stipulation to exceed slightly those of Philadelphia Electric Company, which he contends is currently the largest initial electric pilot in the United States.[78] Indeed, Virginia Committee witness Pollock confirmed that in terms of absolute numbers of customers participating, Virginia Power's Pilot Program, would be among the largest in the country.[79]

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[66] *Id.* at 22.
[67] Virginia Committee Brief at 5-17.
[68] AOBA Brief at 1-6.
[69] Exhibit DSN-12, at 51-53; Exhibit JP-18, at 5; Exhibit BRO-17, at 11-13.
[70] Exhibit DSN-12, at 51; Exhibit JP-18, at 5; Exhibit BRO-17, at 11-12.
[71] *Id.*; Norwood, Tr. at 130; Pollock, Tr. at 226.
[72] Exhibit HMS-15, at 12.
[73] *Id.*
[74] Spinner, Tr. at 164, 166-67.
[75] Staff Brief at 3.
[76] *Id.*
[77] Koogler, Tr. at 265.
[78] *Id.* at 266.
[79] Pollock, Tr. at 234.

As to the administrative pitfalls, Virginia Power contends that the principle goals of the Pilot Program are to (i) develop, implement, and test the business processes and systems that are necessary to accommodate retail customer choice, and (ii) educate customers about retail competition.[80] Virginia Power further submits that permitting a large number of customers to switch suppliers at the outset, before refinement of the required infrastructure, could compromise the success of the Pilot Program and weaken customers' confidence in retail competition.[81]

Finally, Virginia Power urges rejection of an initially larger Pilot Program because of the impact lost gross receipts taxes ("GRT") could have on state and local governments.[82] Under current law, competitive suppliers do not collect or remit GRT on their energy sales.[83] The 1999 General Assembly addressed this issue by passing Senate Bill 1286, which replaces the GRT with an income tax and consumption tax.[84] However, Senate Bill 1286 does not take effect until January 1, 2001.[85] Therefore, any sales of energy by competitive suppliers before January 1, 2001, or during Phase I of the Pilot Program will result in the loss of GRT revenue for state and local governments.

The parties generally agree that the Pilot Program represents the initial step in the transition to full competition as envisioned by the General Assembly when it passed the Restructuring Act.[86] By being the initial step, I concur with Virginia Power's assessment that the size of the Pilot Program should walk the fine line of being large enough to attract competitive suppliers, and manageable enough to avoid administrative pitfalls. Based on the record, I find that the Pilot Program size expressed in the Stipulation should be adopted.

As discussed above, proponents for a larger Pilot Program tend to focus on attracting competitive suppliers to Virginia. From a general perspective, all other things being equal, the larger the Pilot Program, the more attractive it should be to competitive suppliers. But, no party offered any evidence regarding the number of competitive suppliers that would participate in the Pilot Program. Thus, it is impossible to gauge the impact of a larger Pilot Program on attracting competitive suppliers. In the absence of such evidence, the fact that the size of the Pilot Program provided in the Stipulation ranks among the nation's largest in absolute terms is persuasive. Moreover, the Stipulation limits the Pilot Program to discrete geographic areas for residential and small non-residential customers, permitting competitive suppliers to capture over 11%[87] of the available customers within each area. This should help to reduce advertising costs for competitive suppliers. Accordingly, I find that the size of the Pilot Program should be adjusted to the level contained in the Stipulation.

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[80] *Id.* at 265; Virginia Power Brief at 16.
[81] Exhibit DFK-19, at 6; Virginia Power Brief at 16.
[82] Exhibit DFK-19, at 6-9; Virginia Power Brief at 16-17.
[83] *Id.*
[84] *Id.*
[85] *Id.*
[86] Virginia Power Brief at 2; Attorney General Brief at 2; Virginia Committee Brief at 1; Exhibit HMS-15, at 4; Washington Gas Brief at 1-2;
[87] As originally proposed, 7.4% of the Greater Richmond Area residential and small non-residential customers could participate. Exhibit Company-1, at 30. The Stipulation increases participation levels for the Greater Richmond Area by 50%. Exhibit DFK-5, at ¶ 3.

2. Projected Market Prices for Generation

The single most important issue concerning the ultimate success of the Pilot Program is the determination of projected market prices for generation. Under the Restructuring Act, projected market prices for generation are essentially the "shopping credit" or "price to beat" for customers seeking an alternative energy provider.[88] That is, projected market prices for generation define the maximum price that a competitive supplier can charge a retail customer without charging the customer more than Virginia Power would charge.[89]

In this case, the parties agree that in projecting market prices for generation for the Pilot Program the Commission should be as accurate as possible, consistent with the goals of the Restructuring Act.[90] However, the Restructuring Act does not define the term "projected market prices for generation," providing only that they are to be "determined by the Commission" in the context of establishing "wires charges."[91] Under the Restructuring Act, a wires charge is simply a fee by which an incumbent utility collects stranded costs from customers that purchase electricity from competitive suppliers. It does not represent any cost related to using Virginia Power's transmission or distribution "wires." Virginia Code § 56-583 A calculates wires charges to be the difference between unbundled generation rates and projected market prices, plus transition costs. Furthermore, § 56-583 A limits the total charges to a customer, including wires charges and projected market prices, to the utility's capped rates. The actual language of § 56-583 A is as follows:

> To provide the opportunity for competition and consistent with § 56-584, the Commission shall establish wires charges for each incumbent electric utility, effective upon the commencement of customer choice, which shall be the sum (i) of the difference between the incumbent utilities' capped unbundled rates for generation and projected market prices for generation, as determined by the Commission, and (ii) any transition costs incurred by the incumbent electric utility determined by the Commission to be just and reasonable; however, the sum of such wires charges, the unbundled charge for transmission and ancillary services, the applicable distribution rates established by the Commission and the above projected market prices for generation shall not exceed the capped rates established under § 56-582 A 1 applicable to such incumbent electric utility. The Commission shall adjust such wires charges not more frequently than annually and shall seek to coordinate adjustments of wires charges with any adjustments of capped rates pursuant to § 56-582.

[88] Exhibit DFK-19, at 23; Exhibit DSN-12, at 30-31; Attorney General Brief at 3; Spinner, Tr. at 196.
[89] *Id.*
[90] Virginia Power Brief, at 4; Staff Brief at 7; Attorney General Brief at 2-3; Virginia Committee Brief at 20-21; Washington Gas Brief at 5; AEP Brief at 4-5; AOBA Brief at 6.
[91] Va. Code § 56-583 A.

In the Stipulation offered by the Stipulating Parties, projected market prices for generation generally reflect the revenue Virginia Power would realize from selling its displaced generation on the wholesale market.[92] Specifically, the Stipulation establishes a two-step methodology for determining market prices.[93] First, Virginia Power and Staff would determine a "Base Market Price," which utilizes "[PJM's] historical hourly prices at the Virginia Power interface as well as the current period and forward-looking capacity prices from the PJM Capacity Credit Market."[94] Second, an "Adjustment Factor" no less than one is applied to the Base Market Price for each customer class.[95] As stated in the Stipulation, "[t]he Adjustment Factor is intended to reflect the Company's ability to sell into markets such as the Cinergy and PJM West trading hubs."[96] Within these calculations are adjustments to account for transmission line losses, transmission charges, ancillary service charges for System Control and Dispatch Service, and charges for Reactive Supply and Voltage Control from Generation Sources Services.[97] Consequently, the projected market price for generation as determined in accordance with the Stipulation is a wholesale price less Virginia Power's costs of wheeling power to market.

Proponents of the Stipulation maintain that projected market prices for generation must be determined from the perspective of the incumbent electric utility to ensure that they are made whole for opening up their retail markets to competition.[98] In support of this proposition, Virginia Power cites to Virginia Code § 56-584, which provides utilities with two opportunities to recover stranded costs. The first, for customers that continue to purchase electric generation from Virginia Power, is through capped rates. The second, for customers that purchase electricity from competitive suppliers, is through a wires charge. Specifically, § 56-584 provides:

> Just and reasonable net stranded costs, to the extent that they exceed zero value in total for the incumbent electric utility, shall be recoverable by each incumbent electric utility provided each incumbent electric utility shall only recover its just and reasonable net stranded costs through either capped rates as provided in § 56-582 or wires charges as provided in § 56-583.

Virginia Power recognized that § 56-584 only entitled it to an opportunity to recover stranded costs.[99] Nonetheless, Virginia Power pointed out that recovery of stranded costs was limited to the period capped rates will be in effect. Therefore, Virginia Power argues that its

[92] Exhibit DFK-5, at ¶¶ 6-9; Company Brief at 5-6; Koogler, Tr. at 73-74, 261; Spinner, Tr. at 198.
[93] Exhibit DFK-5, at ¶¶ 6-10.
[94] *Id.* at ¶ 6.
[95] *Id.* at ¶ 7-8.
[96] *Id.* at ¶ 7.
[97] *Id.* at ¶¶ 6-7.
[98] Company Brief at 4, 8; Exhibit HMS-15, at 20-22.
[99] Company Brief at 8; Exhibit DFK-19, at 30.

investors should not be subjected to the additional exposure of market prices set higher than net revenues, which it can expect to realize by selling displaced capacity in the energy market.[100]

Staff witness Spinner interpreted wires charges to be a mechanism "that is to provide the equalizing stream of cash flows between the newly instituted competitive regime for generation services and the discarded regulated regime."[101] Mr. Spinner further testified that the Restructuring Act "requires establishment of a wires charge to compensate incumbents for any financial losses caused by the replacement of regulated cash flows with market-based cash flows stemming from the incumbent's loss of retail load."[102]

AOBA interprets the Restructuring Act differently. AOBA focuses on the language in § 56-584 that it claims limits the recovery of net stranded cost "to the extent that they exceed zero value."[103] Based on this language, AOBA reasons that until the Commission renders a decision or finding that Virginia Power's net stranded costs exceed zero, no recovery should be permitted.[104] Moreover, AOBA argues that elimination of the wires charges from the Pilot Program cannot create false expectations for participants because without a Commission determination on net stranded cost, no basis exists for establishing wires charges.[105]

I disagree with AOBA. As discussed above, most parties recognize that projected market prices for generation should be as accurate as possible if the information of the Pilot Program is to be meaningful. Stranded cost, though not defined by the Restructuring Act, generally reflects investments in generation facilities made by a regulated utility unlikely to be recoverable in a competitive market. In this case, if the embedded cost of generation for Virginia Power exceeds the projected market price for generation, that constitutes evidence that Virginia Power is likely to have net stranded costs in excess of zero. Therefore, I find it reasonable to include wires charges in Virginia Power's Pilot Program.

Both the Attorney General and Virginia Committee offer projected market prices for generation that differ from those of the Stipulation. Generally, these parties interpret § 56-583 A to view projected market prices for generation from the perspective of a retail customer.[106]

The Attorney General supports a "retail" view for projected market prices for generation as being consistent with the primary purpose of the Restructuring Act, which is to implement retail competition for electricity.[107] The Attorney General points out that one of the explicitly stated purposes for wires charges is "[t]o provide an opportunity for competition."[108] Moreover, the Attorney General submits that its proposal does not deprive Virginia Power of an opportunity

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[100] Company Brief at 8.
[101] Exhibit HMS-15, at 20-21.
[102] *Id.* at 21-22.
[103] AOBA Brief at 6-8.
[104] *Id.* at 7.
[105] *Id.* at 7-8.
[106] Attorney General Brief at 5-6, 12-15; Virginia Committee Brief at 23-25.
[107] Attorney General Brief at 5-6.
[108] *Id.*; Va. Code § 56-583 A.

to recover its just and reasonable net stranded costs.[109] In this regard, the Attorney General avers that the Restructuring Act provides multiple avenues for the recovery of net stranded costs, one of which is wires charges, and relies upon the Commission ultimately to determine Virginia Power's net stranded costs.[110]

Furthermore, the Attorney General maintains that to provide a genuine opportunity for competition, projected market prices for generation should reflect the "retail" price of electricity.[111] As discussed above, the projected market price for generation represents the price a competitive supplier must beat in order to offer any savings to a customer for switching from Virginia Power. Thus, the Attorney General advocates a projected market price for generation designed to include: (i) the projected wholesale market price; (ii) a retail adder calculated to cover competitive suppliers' costs, including marketing, advertising, administrative, and a reasonable return; and (iii) the transmission costs and losses necessary to get the power to and through Virginia Power's system.[112] In addition, the Attorney General contends that the Restructuring Act requires a "projected" as opposed to "historical" market price for generation.[113] Because the market prices of the Stipulation are based on historic data, the Attorney General also proposes a futures adjustment factor computed "by dividing (1) the 12-month average of NYMEX futures settlement prices for PJM over the initial year of the pilot, by (2) the 12-month average of NYMEX futures settlement prices for PJM over the 12-month historical period covered by the updated PJM market price calculation."[114] Finally, the Attorney General recommends limiting the futures adjustment factor to plus or minus 10% for the Pilot Program.[115]

Similar to the Attorney General, the Virginia Committee also faults the projected market prices for generation of the Stipulation for being "historic" rather than "projected" and being "wholesale" rather than "retail."[116] In addition, the Virginia Committee faults the projected market prices for generation of the Stipulation for including only short-term spot prices for capacity and energy, and ignoring the long-term capital costs of generation.[117] Consequently, the Virginia Committee completely rejects the methodology for projecting market prices for generation proposed by the Stipulation.[118] In its place, it recommends that the Commission adopt the "all-in" cost of generation proxy developed by Virginia Committee witness Pollock.[119] As Mr. Pollock testified, his projected market price for generation is based on estimated costs for a new combined-cycle gas turbine.[120]

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[109] Attorney General Brief at 6-12.
[110] *Id.*
[111] *Id.* at 12-15.
[112] *Id.* at 12-13; Exhibit DSN-12, at 45-48
[113] Attorney General Brief at 15-17.
[114] *Id.* at 16-17; Exhibit DSN-12, at 47.
[115] Attorney General Brief at 17.
[116] Virginia Committee Brief at 20-25.
[117] *Id.* at 23; Exhibit JP-18 at 18-24.
[118] Virginia Committee Brief at 25.
[119] *Id.* at 25-27; Exhibit JP-18, at 18-24.
[120] Exhibit JP-18, at 21-22; Pollock, Tr. at 245-46.

Evaluation of the various recommendations for projected market prices for generation to be utilized during the Pilot Program, will focus first on whether the Stipulation meets the "projected" statutory requirement. This will be followed by a discussion of wholesale versus retail.

Section 56-583 A directs the Commission to determine the projected market prices for generation. However, neither this section nor the Restructuring Act defines "projected market prices for generation" or provides further instructions as to how such prices are to be projected. Thus, I find nothing to prohibit the Commission from estimating future market prices based on historical results. Accordingly, the focus should be on determining the methodology most likely to predict market prices for generation during the course of the Pilot Program.

Staff defends the use of historic wholesale market transactions as the most reliable price data currently available.[121] Though Staff witness Spinner acknowledged that there are problems in using historical information to predict such rapidly changing markets, he also testified, "that it is the best way to do it, given the limitations."[122]

As an alternative, Attorney General witness Norwood proposed to adjust the historical PJM prices by a factor based on NYMEX futures contract prices.[123] He recognized that the NYMEX market will take some time to mature, but justified its use as "the best thing we have."[124] Both Mr. Spinner and Virginia Power witness Koogler testified that they explored the possibility of using NYMEX futures and found it to have liquidity problems, *i.e.* there were not enough transactions.[125] On brief, even the Attorney General appears to back away from Mr. Norwood's recommended adjustment, suggesting that its proposed adjustment factor be limited to plus or minus 10%.[126] Accordingly, based on the record, there is no evidence to support that historic market prices, adjusted by a factor derived from NYMEX futures contract prices, produces more reliable results than simply using historic market prices to predict future prices.

The Virginia Committee recommends adoption of an "all-in" cost of generation proxy based on estimated costs for a new combined-cycle gas turbine. This proposal takes a long-term view in determining projected market prices for generation. However, the Pilot Program is likely to last between twelve and nineteen months. Therefore, I agree with all of the other parties that a short-term focus is more appropriate for this proceeding.

Turning to the issues of wholesale versus retail or Virginia Power versus customer point of view, these issues essentially address the meaning and intent of the Restructuring Act in general and § 56-583 A in particular. Put simply, proponents of the Stipulation view the recovery of stranded costs as "trump," whereas proponents of retail considerations read the Restructuring Act primarily to foster competition. However, the statutory language, especially that of § 56-583 A does not contain the words "wholesale" or "retail." Section 56-583 A only

[121] Staff Brief at 7; Spinner, Tr. at 188-89.
[122] Spinner, Tr. at 188.
[123] Exhibit DSN-12, at 46-47.
[124] Norwood, Tr. at 135.
[125] Spinner, Tr. at 203.
[126] Attorney General Brief at 17.

states "projected market prices for generation" without modification. Moreover, § 56-583 A does not guarantee either competition or recovery of stranded costs. Rather, the statutory language only provides for the "opportunity" for both. Thus, I find that the statutory language and, indeed, the record of this case,[127] suggest an attempt by the General Assembly to accomplish both goals (recovery of stranded costs and establishing competition) by avoiding either of the extremes.

As developed in the Stipulation, projected market prices for generation attempt to ensure Virginia Power recovers its net stranded costs.[128] The results are projected market prices that are below the wholesale price level, as Virginia Power subtracts its transmission and ancillary costs from its derivation of wholesale prices. Thus, for example, if the PJM interconnect price is $0.04 and Virginia Power's transmission and ancillary costs are $0.003, then the projected market price for generation would be $0.037. On rebuttal Mr. Koogler attempts to show that a careful competitive service provider could manage to purchase or produce electricity and serve Virginia retail customers at the below-wholesale prices.[129] However, Mr. Koogler misses the real question of why a competitive supplier would try to sell to Virginia retail customers at or below $0.037 when it could sell the power for $0.04 at wholesale at the PJM interconnect. Consequently, I agree with the Attorney General and Virginia Committee, that there would be little or no retail competition if the methodology for projecting market prices for generation in the Stipulation is adopted for the Pilot Program.

On the other hand, artificially increasing projected market prices for generation to ensure margins and returns for competitive suppliers to guarantee competition may err in the opposite direction. In this regard, I agree with Staff that because of uncertainty in calculating the retail adder, its use in this case may be premature.[130] More understanding of retail competition and a more definite determination of stranded costs may be required before the appropriateness of a retail adder can be evaluated.

As stated above, the language of § 56-583 A provides only for the "projected market prices for generation." I therefore find that such prices should reflect only the prices found at the relative interconnects, without regard to transmission and ancillary costs for either Virginia Power or competitive service providers. Eliminating transmission and ancillary cost considerations from the projection of market prices for generation is consistent with the "for generation" language of the statute, and should provide opportunities for both recovery of net stranded costs and competition. Consequently, I recommend that the Commission modify the Stipulation to eliminate any adjustment related to Virginia Power's transmission losses, transmission charges, or other ancillary service charges.

3. Modification of Projected Market Prices for Generation Prior to Phase II.

Under the terms of the Stipulation, Virginia Power and Staff will determine the projected market prices for generation to be used in calculating wires charges during Phase I "ninety (90)

[127] *See*, Koogler, Tr. at 287-89; Attorney General Brief at 7.
[128] Exhibit HMS-15, at 20-22.
[129] Exhibit DFK-19, at 26-27, Schedule 1.
[130] Staff Brief at 9-11.

days prior to delivery of competitively supplied electricity to the first customer in the Pilot."[131] Likewise, projected market prices for generation to be used during Phase II will be determined by Virginia Power and Staff "ninety (90) days prior to implementation and will be applicable to both Phase I and Phase II participants."[132] Thus, as written, the Stipulation proposed to adjust wires charges approximately seven months after they are established initially.

However, § 56-583 A provides that "[t]he Commission shall adjust such wires charges not more frequently than annually and shall seek to coordinate adjustments of wires charges with any adjustments of capped rates pursuant to § 56-582." On brief, the Attorney General noted that this portion of the statute affords "suppliers and customers with a wires charge certainty for one year."[133] On the other hand, Virginia Power and Staff drew a distinction between the initial "establishment of wires charges" and subsequent "adjustments in such wires charges."[134] They argue that "there can be no adjustment to the wires charges until after there is an initial determination to be adjusted."[135]

The Restructuring Act links the recovery of stranded costs, wires charges, and capped rates. Consistent with this linkage, § 56-583 A calls for the adjustment of wires charges to be coordinated with "adjustments of capped rates pursuant to § 56-582." Section 56-582 B lists several instances where the Commission may adjust capped rates, including recovery of fuel costs, changes in taxation by the Commonwealth, and for financial distress beyond a utility's control. A change in the market price for generation is not listed as a reason for changing capped rates. But, this is a pilot or experiment conducted under the authority of § 56-234. If anything, the limitations on adjusting wires charges found in § 56-583 A demonstrate the importance of the Pilot Program for developing an understanding of retail competition before full implementation of the Restructuring Act. Because § 56-234 provides the Commission with flexibility regarding rate experiments such as the Pilot Program, I agree with Virginia Power and Staff that ninety days prior to Phase II, projected market prices for generation may be recalculated.

The Stipulation further provides that Virginia Power and Staff "may recommend to the Commission that changes in such determination of Market Prices be effective with the commencement of Phase II."[136] In this regard, any party should have the right to petition the Commission for a change in the determination of projected market prices for generation prior to the commencement of Phase II. Moreover, if Virginia Power, Staff, or another party proposes a change in the methodology for determining projected market prices for generation, all parties should be given notice and an opportunity to be heard before the Commission rules on such a substantive change.

[131] Exhibit DFK-5, at ¶ 10.
[132] *Id.*
[133] Attorney General Brief at 22, n.12.
[134] Virginia Power Brief at 11-12; Staff Brief at 5-7.
[135] Staff Brief at 6, n.3.
[136] Exhibit DFK-5, at ¶ 10.

ISSUES NOT COVERED BY THE STIPULATION

There were four areas of controversy outside of the Stipulation. These areas or issues include: (i) rate design, (ii) metering and billing, (iii) terms and conditions, and (iv) reporting. Each of these issues is discussed separately below.

1. Rate Design

To permit retail competition, Virginia Power must unbundle its current Commission-approved rates. Thus, Virginia Power functionalized the costs for each customer class into customer, energy, production, transmission, and distribution costs.[137] Virginia Power performed this functionalization based upon the cost of service study submitted in Case No. PUE960296 and adjusted to reflect recommendations by Staff.[138] No party took issue with the adjusted cost of service study, or the functionalized costs developed by Virginia Power.[139]

In developing its tariffs for each of the customer classes included in the Pilot Program, Virginia Power directly transferred the results of the cost of service study for customer and distribution costs.[140] Unbundled transmission rates are subject to FERC regulation and must follow the FERC OATT.[141] As will be discussed in more detail below, Virginia Power proposes to treat the difference between the transmission costs determined in its cost of service study and the FERC OATT as a transition cost.[142] The only other unbundled charge collected by Virginia Power from customers purchasing generation services from a competitive supplier is the wires charge, which as defined by § 56-583 A is the sum of (i) the difference between Virginia Power's unbundled rates for generation and projected market prices for generation, and (ii) transition costs.

a. Transmission Costs as Transition Costs

As discussed above, there are differences between Virginia Power's unbundled transmission charges, as developed by its adjusted cost of service study from Case No. PUE960296, and its transmission rates under the FERC OATT. The chart below summarizes these differences.[143]

[137] Exhibit Company-1, at 60-61.
[138] *Id.* at 56-60.
[139] Company Brief at 23.
[140] *Id.*
[141] *Id.*; Exhibit Company-1, at 62.
[142] Exhibit AJE-7, at 23-24; Exhibit AJE-20, at 20.
[143] Exhibit Company-1, Appendix C, Schedule 5.

Customer Class	Transmission Rate Virginia Unbundled		Transmission Rate FERC OATT	
Residential	$0.00281	per kWh	$0.00265	Per kWh
GS-1	$0.00252	per kWh	$0.00208	Per kWh
GS-2	$0.803	per KW	$0.754	Per KW
GS-3	$0.849	per KW	$0.833	Per KW
GS-4	$0.692	per KW	$1.057	Per KW
Church	$0.00336	per kWh	$0.00141	Per kWh

The above differences in transmission rates are caused by differences in ratemaking techniques used by FERC and the Commission.[144]

For customer classes where the FERC rate is lower than its Virginia unbundled cost of service (*i.e.*, all customer classes except GS-4), Virginia Power proposes to add the difference to wires charges as a transition cost.[145] For customer classes where the FERC rate is higher than its Virginia unbundled cost of service (*i.e.*, GS-4), Virginia Power avows to limit its recovery of costs to its Virginia unbundled cost of service.[146] On brief, Virginia Power explains that the rate cap provisions of § 56-582 prohibit it from charging the higher FERC rates.[147]

The Attorney General contends that "[t]he Commission should not make up for an allegedly inadequate FERC rate under the guise of transition costs."[148] Thus, the Attorney General argues that a shortfall in the FERC OATT does not constitute a just and reasonable transition cost.[149]

The Virginia Committee supports Virginia Power's treatment of differences between the FERC OATT and its Virginia unbundled cost of service. The Virginia Committee counsels that unbundled rates of the Pilot Program "should remain revenue neutral relative to Virginia Power's bundled retail rates."[150]

The Restructuring Act does not define "transition costs." Nonetheless, on cross-examination Virginia Power witness Koogler defined "transition costs" as "part of the transition, costs that are incurred that go away after some period of time, after you have made the implementation to retail."[151] It is undisputed that with retail competition, customers will purchase transmission services pursuant to the FERC OATT. Further, no evidence has been offered to show that the differences in ratemaking techniques between FERC and the Commission are temporary. Thus, under Virginia Power's definition, the shortfalls caused by differences in ratemaking techniques between FERC and the Commission cannot be considered

[144] Exhibit AJE-7, at 23-24.
[145] *Id.* at 15; Evans, Tr. at 87-88.
[146] *Id.*
[147] Virginia Power Brief at 24.
[148] Attorney General Brief at 23-24; Exhibit DSN-12, at 24-28.
[149] Attorney General Brief at 24.
[150] Virginia Committee Brief at 17; Exhibit JP-18, at 11.
[151] Koogler, Tr. at 293.

transition costs. These differences are permanent, and will not go away after full implementation of retail competition.

As to the Virginia Committee's concerns for revenue neutrality, I agree that to the extent possible, the Commission should strive to maintain revenue neutrality in designing rates for the Pilot Program. However, concerns for revenue neutrality cannot be used to avoid federal jurisdiction or to amend the Restructuring Act to eliminate rate cap provisions provided in §§ 56-582 and 56-583. In effect, this language protects GS-4 customers from higher FERC OATT charges by requiring corresponding reductions to wires charges. Accordingly, I find that unbundled transmission rates for the Pilot Program should reflect the FERC OATT. Shortfalls between the FERC OATT and Virginia Power's cost of service should not be treated as transition costs.

b. Design of Wires Charges

As discussed above, § 56-583 A defines wires charges to be the sum of (i) the difference between Virginia Power's unbundled rates for generation and projected market prices for generation, and (ii) transition costs. Thus, after setting aside transition charges related to the FERC OATT, the design of wires charges comes down to determining the difference between Virginia Power's unbundled rates for generation and the projected market prices for generation. Virginia Power, Staff, the Attorney General and Washington Gas all offer different methodologies for designing wires charges.

Virginia Power recommends that wires charges reflect its currently approved rate blocking and seasonality.[152] That is, Virginia Power proposes wires charges "blocked to mirror the present rate structures."[153] This produces results that will have all customers of a class sharing in wires charges to the same extent they are assigned embedded generation costs.[154] In defense of its proposed wires charge design, Virginia Power asserts that its capped rates and § 56-583 A require that "unbundled rates must be designed so as not to exceed the capped rates on a monthly basis (*i.e.*, on a bill-to-bill basis)."[155] Moreover, Virginia Power maintains that its proposed wires charge design is consistent with applicable ratemaking principles, including:

> Equity. Wire charges should be designed so that all customers within a class share in the payment of wires charges.
>
> Market prices should be seasonally differentiated. If the actual market exhibits seasonal variation in pricing, it should be reflected in the design of the market prices based on the embedded rates that have historically reflected seasonal pricing. Consistently, a seasonally differentiated market price will correctly yield a seasonally differentiated wires charge.

[152] Virginia Power Brief at 24-27; Exhibit AJE-7, at 10-13.
[153] Exhibit AJE-7, at 12.
[154] Exhibit AJE-20, at 5.
[155] Virginia Power Brief at 25; Exhibit AJE-7, at 12.

> Stability. The methodology used to design the market prices in the rate schedules and the resulting wires charges should, as the market price changes, provide stable and consistent results with respect to the recovery of wires charges over time.[156]

Staff proposes two options for designing wires charges.[157] However, in both options, Staff designs wires charges to produce one shopping credit (*i.e.*, projected market price for generation) for each season.[158] Under Staff Option #1, a different wires charge is developed for each rate block for each season.[159] Thus, for residential customers, Staff Option #1 calculates a different wires charge for the first 800 kWh block in the summer than in the winter. In contrast, Virginia Power mirrors its current rate design and derives the same wires charge for the first 800 kWh block for both the summer and winter.

Under Staff Option #2, for each customer class, Staff computes a single seasonal shopping credit and computes a single wires charge applicable to all rate blocks for each season.[160] The tradeoff for the added simplicity of Staff Option #2 is that bill-to-bill revenue neutrality is lost. That is, Staff Option #2 fails to meet the rate cap provisions of § 56-583 A on a bill-to-bill comparison basis, though this option complies on a customer class basis (assuming all customers participate in the Pilot Program).[161]

The following table provides a comparison of the wires charges designs between Virginia Power and Staff's two options for residential customers. The comparison is based on amounts as filed by Virginia Power in April 1999.[162]

Rate Block	Unbundled Generation	Virginia Power		Staff Option #1		Staff Option #2	
		Market[163]	Wires[164]	Market[163]	Wires[164]	Market[163]	Wires[165]
Summer							
1st 800	$0.04992	$0.03466	$0.01526	$0.04491	$0.00501	$0.04491	$0.013413
> 800	$0.07084	$0.04918	$0.02166	$0.04491	$0.02593	$0.04491	$0.013413
Winter							
1st 800	$0.04992	$0.03466	$0.01526	$0.030169	$0.019751	$0.030169	$0.016313
> 800	$0.04194	$0.02912	$0.01282	$0.030169	$0.011771	$0.030169	$0.016313

[156] Virginia Power Brief at 25; Exhibit AJE-20, at 2-4.
[157] Staff Brief at 13; Exhibit HMS-15, at 50-51.
[158] *Id.*
[159] Exhibit HMS-15, at 50-51, Attachment HMS-4.
[160] *Id.*
[161] *Id.*; Staff Brief at 13-14.
[162] Exhibit HMS-15, Attachment HMS-4.
[163] Projected Market Price or Shopping Credit.
[164] Wires Charges equal the difference between Unbundled Generation and Projected Market Prices.
[165] Wires Charges do not equal the difference between Unbundled Generation and Projected Market Prices.

In support of its proposals, Staff stressed efficiency over equity.[166] As Staff witness Spinner explained:

> Economists speak of an equity/efficiency tradeoff because competitive markets automatically produce outcomes that some would consider unfair or inequitable. In passing the Act, the Legislature implicitly determined that the Commonwealth would be best served by making electric markets more efficient by introducing competition into the industry.[167]

Consequently, Staff designed its wires charge recommendations based on one seasonal projected market price for generation or shopping credit to facilitate customer understanding.[168] Nonetheless, Staff agreed with Virginia Power regarding the need to differentiate wires charges on a seasonal basis to dissuade customers from moving back and forth between Virginia Power and competitive suppliers in order to take advantage of seasonal price differences (*i.e.*, gaming).[169]

The Attorney General proposes to establish a single projected market price for generation, or shopping credit, for each customer class.[170] Following the Attorney General's recommendation, wires charges are calculated by subtracting the projected market price for generation, as determined for each customer class, from the unbundled generation cost assigned to each rate block.[171] Thus, customers wishing to shop for a better price from competitive suppliers would have one price to beat that would not vary seasonally or by usage. Based on Attorney General witness Norwood's presentation, it appears that the Attorney General's proposal would maintain bill-to-bill revenue neutrality, but would not produce a seasonally adjusted shopping credit.

The Attorney General claims limiting the price to beat or shopping credit to a single amount will avoid "unnecessary confusion during the critical initial stages of implementing retail competition, especially for smaller customers."[172] Moreover, the Attorney General argues that the risk of seasonal gaming in the Pilot Program does not outweigh the need for customer simplicity.[173] That is, in the Pilot Program, suppliers will be trying to build brand recognition and customer loyalty.[174] Therefore, there is little risk that customers will purchase from a competitive supplier during the winter when it is presumably easier for a competitive supplier to sell for less than the shopping credit, and have the customer move back to Virginia Power during the summer when prices of competitive suppliers may be higher.[175]

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[166] Spinner, Tr. at 165.
[167] *Id.*
[168] *Id.*; Staff Brief at 14.
[169] *Id.*
[170] Attorney General Brief at 17-19; Exhibit DSN-12, at 22-24.
[171] Exhibit DSN-12, at 22-24, Schedule 1.
[172] Attorney General Brief at 17.
[173] *Id.* at 19.
[174] *Id.*
[175] *Id.*

Finally, Washington Gas endorses a flat wires charge that does not vary by rate block or by season.[176] The focus of Washington Gas witness Raab in proposing a flat wires charge was to provide for a more equitable recovery of stranded costs.[177] For example, Mr. Raab testified:

> Since the bulk of Virginia Power's stranded costs can be traced to the ownership of nuclear facilities which are used to meet base loads rather than peak loads, it is clear that an allocation of stranded costs to high load periods and away from base load periods is simply not theoretically justified.[178]

In evaluating the alternative designs for wires charges proposed by the parties, each must be examined in relation to the Restructuring Act. Section 56-583 A, provides the following limit or cap for wires charges:

> the sum of such wires charges, the unbundled charge for transmission and ancillary services, the applicable distribution rates established by the Commission and the . . . projected market prices for generation shall not exceed the capped rates established under § 56-582 A 1 applicable to such incumbent electric utility.

Based on this statutory language, I agree with Virginia Power that the Restructuring Act requires revenue neutrality on a bill-to-bill basis. Analysis performed only on a customer class level may skew results as not all customers will participate in the Pilot Program. Indeed, the Pilot Program, by design, is available to a limited number of customers. If the total charges exceed the statutory cap for some customers and those are the customers to enroll in the Pilot Program, then the limits of § 56-583 A will be violated. Thus, I find that Staff Option #2 should not be implemented.

The next consideration should be seasonality. Here, as stated by the Attorney General, the question boils down to whether the customer convenience of a simpler wires charge or shopping credit design offsets the added risk of gaming. As Virginia Power witness Evans testified, gaming, or customers returning to Virginia Power's system during periods of high cost, can occur when customers decide to return or when competitive suppliers decide not to serve.[179] Moreover, Staff points out that gaming may have detrimental effects on non-participants, who may incur higher rates as the utility purchases additional power during the summer to satisfy the demands of returning customers.[180] Finally, regarding the Attorney General's assertion that a single price to beat will foster greater understanding, on rebuttal, Virginia Power presented copies of an advertisement from PECO Energy's Electric Choice Program, which has multiple prices to beat.[181] Mr. Evans concludes that "[a]lthough a flat market price may be easier for customers to understand, a blocked, seasonally differentiated market price is logical based on

[176] Washington Gas Brief at 5-11; Exhibit PHR-9, at 6-10.
[177] Exhibit PHR-9, at 8.
[178] *Id.*; Washington Gas Brief at 7.
[179] Evans, Tr. at 304-5.
[180] Staff Brief at 14-15.
[181] Exhibit AJE-20, at 16-17, Schedule 5.

costs and can be understood by customers."[182] Accordingly, I agree with Virginia Power and Staff that wires charges for the Pilot Program should be seasonally differentiated.

The final step in the analysis is to choose between the two remaining seasonally adjusted alternatives, or Virginia Power's proposal and Staff Option #1. Based on the record in this case, I find that Virginia Power's proposed wires charge design should be easier for customers to understand. In comparing the two choices, I find that the variations for small users under Staff's proposal, especially for customers that purchase under the first block of the residential rate schedule, will be more confusing than variations between rate blocks under Virginia Power's proposal. For example, under the current residential rate design, customers using less than 800 kWh per month pay the same rate each month. Only usage over 800 kWh per month is seasonally differentiated. These customers are not accustomed to having their rates vary from month to month, but that would be the result under Staff's proposal. Indeed, some of these differences may be dramatic.[183] On the other hand, differences in wires charges and shopping credits between rate blocks are consistent with the current rate design, which may be explained in consumer education programs such as the one conducted by PECO. Accordingly, I find that wires charges should be designed as proposed by Virginia Power.

2. Metering and Billing

Virginia Power proposes to provide all metering and billing services during the Pilot Program.[184] These services include installation, maintenance, and removal of all meters, as well as metering customer usage, reporting customer usage to competitive suppliers, and billing customers.[185] Under its proposal, Virginia Power will render customers a single bill for electric service.[186]

In support of its proposal, Virginia Power claims that most customers prefer one bill and by retaining the billing function, Virginia Power can better protect customers.[187] In addition, Virginia Power claims that a single bill facilitates contributions to low-income assistance programs.[188] Furthermore, Virginia Power raises operational reasons that make it impractical to allow competition for metering and billing services in the context of the Pilot Program.[189] During the hearing, Virginia Power witness Koogler listed several operational concerns:

> Computer systems would need to be built and tested that would allow competitive meter service providers to communicate with one another. Meter standards for accuracy, safety and certification from third party metering service providers would have to be developed. There are unresolved issues and concerns over the

[182] Exhibit AJE-20, at 17.
[183] *See*, Exhibit HMS-15, Attachment HMS-5.
[184] Virginia Power Brief at 34-38; Exhibit Company-1, at 48; Exhibit DFK-19, at 51-52.
[185] Virginia Power Brief at 34; Exhibit Company-1, at 48.
[186] Virginia Power Brief at 34; Exhibit Company-1, at 50.
[187] Virginia Power Brief at 35; Exhibit Company-1, at 50.
[188] *Id.*
[189] Virginia Power Brief at 37; Exhibit Company-1, at 49.

> development and control of procedures for the connection and disconnection of service. A new entity would need to be created to ensure meter accuracy in compliance with the new rules and regulations. A new entity may be needed to store and manage the meter data.[190]

Moreover, Virginia Power asserts that the General Assembly prohibited the Commission from including competitive metering and billing as part of the Pilot Program. Specifically, § 56-581 B states:

> No later than September 1, 1999, and annually thereafter, the Commission shall submit a report to the General Assembly evaluating the advantages and disadvantages of competition for metering, billing and other services which have not been made subject to competition, and making recommendations as to when, and for whom, such other services should be made subject to competition.

Virginia Power also points to the language of § 56-577 C, which authorizes the Commission to conduct pilot programs "encompassing retail customer choice of electric energy suppliers, consistent with its authority otherwise provided in this title and the provisions of this chapter." Virginia Power interprets these two statutes to prohibit competitive metering and billing "without additional authority and further evaluation of the market for such services."[191] Virginia Power contends that in its report submitted in response to § 56-581 B[192] that the Commission took the position that it currently lacks the authority to require competition for metering and billing services.[193]

The Virginia Committee argues to the contrary.[194] Virginia Committee witness Pollock maintains that Virginia Power's proposal not to permit competitive metering and billing services during the Pilot Program "is inconsistent with the goal of promoting retail competition."[195] Mr. Pollock testified that Virginia Power's position reduced the overall effectiveness of the Pilot Program "as a means of gaining experience with the various aspects of retail customer choice."[196] And, by retaining the metering and billing functions, Virginia Power enhanced its market power.[197]

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[190] Koogler, Tr. at 263.
[191] Virginia Power Brief at 36.
[192] State Corporation Commission Report to the General Assembly, *Competition for Electric Metering, Billing, and Other Services*, September 1, 1999 ("Commission Report").
[193] Virginia Power Brief at 36-37; *See*, Commission Report at 35.
[194] Virginia Committee Brief at 32-35.
[195] Exhibit JP-18, at 30.
[196] *Id.*
[197] *Id.*

Washington Gas supports the Virginia Committee and pushes for the right for competitive suppliers to directly bill customers for their own sales of electricity.[198] Direct billing gives competitive service providers more of an opportunity to establish brand identification.[199] Indeed, Washington Gas insists that direct billing for its own sales is not a competitive service.[200]

Initially, the Attorney General opposed the institution of competitive metering and billing as part of the Pilot Program.[201] As Attorney General witness Norwood testified, "[t]he potential confusion and harm to consumer participation – in a brand new market for an essential commodity – warrants deferring competitive implementation of these other services."[202] Nonetheless, on brief, the Attorney General recognizes "that competitive metering and billing eventually may play a significant role in the competitive market that we are attempting to create."[203] In addition, the Attorney General notes that large customers may be better able to understand complex tariffs and explicitly request competitive metering and billing.[204] Because of the potential importance of competitive metering and billing in the competitive market and because of the valuable experience that may be obtained from the Pilot Program, the Attorney General does not oppose competitive metering and billing for large customers during the Pilot Program.[205]

Staff generally supports Virginia Power's position that competitive metering and billing be excluded from the Pilot Program.[206] However, Staff does not concur with Virginia Power's legal analysis. Instead, on brief, Staff finds that the Commission has the power to allow competitive metering and billing during the Pilot Program. Section 56-234 provides:

> no provision of law shall be deemed to preclude voluntary rate or rate design tests or experiments, or other experiments involving the use of special rates, where such experiments have been approved by order of the Commission after notice and hearing and a finding that such experiments are necessary in order to acquire information which is or may be in furtherance of the public interest.

According to Staff, this statute "authorizes the Commission to conduct rate design experiments if they will be useful in acquiring information to further the public interest."[207] Information gained from competitive metering and billing during the Pilot Program could be useful to the Commission when it makes its annual reports to the General Assembly.

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[198] Washington Gas Brief at 11-12.
[199] *See*, Spinner, Tr. at 181.
[200] *Id.* at 12.
[201] Exhibit DSN-12, at 55-57.
[202] *Id.* at 56.
[203] Attorney General Brief at 24.
[204] *Id.*
[205] *Id.*
[206] Staff Brief at 20-22.
[207] *Id.* at 21.

AEP agrees with Staff's legal interpretation of the Restructuring Act concerning competitive metering and billing.[208]

I find that Staff and AEP are correct. Section 56-234 authorizes the Commission to conduct experiments, such as competitive metering and billing, as part of Virginia Power's Pilot Program. Furthermore, based on the record in this proceeding, I find that the Pilot Program should permit competitive metering and billing, but only for large commercial and industrial customers served under rate schedules GS-3 and GS-4. Under the Stipulation, the Pilot Program will have approximately nine GS-3 accounts and approximately six GS-4 accounts.[209] This small number of customer accounts should be manageable and should provide both the Commission and Virginia Power valuable information regarding competitive metering and billing.

3. Terms and Conditions

Generally, the parties agree that Virginia Power should update the terms and conditions of the Pilot Program to comply with the rules adopted by the Commission in Case No. PUE980812.[210] Nonetheless, there are several other issues that touch upon the terms and conditions of the Pilot Program. These issues include: (i) fees and charges, (ii) ancillary services, (iii) non-traditional rates, (iv) adjustment to the fuel factor, (v) resale, and (vi) funding for energy efficiency programs. Each issue is discussed separately below.

a. Fees and Charges

The terms and conditions of the Pilot Program contained a number of fees that Staff initially questioned. Through the course of the proceeding, Virginia Power and Staff managed to narrow their differences. For example, Virginia Power and Staff eventually agreed that Virginia Power could charge competitive suppliers a $50 registration fee during the Pilot Program.[211]

However, Staff continues to have concerns regarding fees to be charged customers during the Pilot Program. These fees include: (i) a $5 fee for customers that switch between competitive suppliers, (ii) off-cycle meter reading fees of $12 (if the meter is outdoors) or $17 (if the meter is indoors), and (iii) an advance metering fee.[212] Staff questions whether such fees violate the rate cap provisions of the Restructuring Act.[213] Specifically, § 56-582 A 3 provides:

> The capped rates established under this section shall be the rates in effect for each incumbent utility as of the effective date of this chapter, or rates subsequently placed into effect pursuant to a rate application filed by an incumbent electric utility with the Commission prior to January 1, 2001, and subsequently approved by the Commission, and made by an incumbent electric utility that

[208] AEP Brief at 3.
[209] Exhibit DFK-5, Attachment 1.
[210] Virginia Power Brief at 32.
[211] Staff Brief at 22; Henderson, Tr. at 156.
[212] Staff Brief at 23.
[213] *Id.* at 22-23.

> is not currently bound by a rate case settlement adopted by the Commission that extends in its application beyond January 1, 2002. The Commission shall act upon such applications prior to commencement of the period of transition to customer choice, and capped rates determined pursuant to such applications shall become effective on January 1, 2001. Such rate application and the Commission's approval shall give due consideration, on a forward-looking basis, to the justness and reasonableness of rates to be effective for a period of time ending as late as July 1, 2007. The capped rates established under this section, which include rates, tariffs, electric service contracts, and rate programs (including experimental rates, regardless of whether they otherwise would expire), shall be such rates, tariffs, contracts, and programs of each incumbent electric utility, provided that experimental rates and rate programs may be closed to new customers upon application to the Commission.

Staff reads § 56-582 A 3 to subject all experimental rates, even those of the Pilot Program, to its rate cap ceiling.[214] Therefore, Staff is concerned that new charges under the Pilot Program may violate the rate cap.

Virginia Power replies that "[n]ew services with new costs are not limited by Va. Code § 56-582 A 3, which capped rates for existing services."[215] I agree. The rate cap of § 56-582 A 3 applies to rates in effect as of the effective date of the legislation. New services and new charges do not appear to be covered. However, once adopted, these new fees become subject to the rate cap.

Apart from its legal concerns, Staff takes issue with Virginia Power's proposal to collect for removal costs for advanced meters in advance at the time of installation. Staff argues that because customers may choose to keep their advanced meters indefinitely, Virginia Power should not be permitted to collect for a service it may never provide.[216]

In response to Staff's recommendation, Virginia Power agreed to reduce, by one-half, the removal costs to be charged at installation.[217] However, Virginia Power maintains that because it is not required to install advanced meters, it should be entitled to full recovery of such costs.[218]

Based on the record, I find that Staff's proposal provides Virginia Power with full recovery of costs when incurred. Indeed, Virginia Power's arguments tend to support the need for competition in metering and billing. From a more practical perspective, I find Virginia Power's argument internally inconsistent. On the one hand Virginia Power argues for full recovery of costs, and on the other hand Virginia Power offers to forgo recovery of fifty percent

[214] *Id.* at 23.
[215] Virginia Power Brief at 33.
[216] Staff Brief at 24-25.
[217] Virginia Power Brief at 34; Koogler, Tr. at 298.
[218] Virginia Power Brief at 34.

of its claimed costs. Therefore, I agree with Staff that customers should not be required to pay for the removal of advanced meters at installation. Instead, Virginia Power should be allowed to collect for removal costs when it performs such services.

b. Ancillary Services

Virginia Power proposes a ban on the self-supply of ancillary services during the Pilot Program.[219] While Virginia Power agrees that the FERC OATT permits transmission customers to self-supply certain ancillary services, Virginia Power contends that allowing the self-supply of ancillary services during the Pilot Program would be an "unnecessary complication."[220]

In contrast, the Virginia Committee asserts the Pilot Program participants should be permitted to self-supply ancillary services under Virginia Power's FERC OATT.[221] The activities associated with the provision of ancillary services already contained in the FERC OATT "are precisely the types of activities that should be an integral part of the pilot in order to serve its purpose of preparing Virginia Power, its customers and its competitors, for retail choice."[222]

I find that using the Pilot Program to avoid the FERC OATT runs counter to the purposes of the Pilot Program to facilitate a transition to retail competition. These services currently are competitive. There is no reason to backtrack. Consequently, I agree with the Virginia Committee that customers should be permitted to self-supply ancillary services as provided under Virginia Power's FERC OATT.

c. Non-Traditional Rates

During the course of the proceeding, Virginia Power has refined its proposals regarding participation of customers served under non-traditional rate schedules. Virginia Power will permit customers served under non-traditional rate schedules (*i.e.*, time of usage, load management rates) to participate in the Pilot Program, and permit such customers to return to their non-traditional schedules.[223] In this regard, for customers that wish to participate in the Pilot Program, Virginia Power will waive contractual provisions that otherwise would require continued service under the non-traditional rate schedule for one to five years.[224] In addition, industrial customers being served, in part, on real time pricing, will be permitted to move a proportional amount of their usage to the Pilot Program.[225] For example, if Virginia Power serves an industrial customer in part under GS-4, and in part under a real time pricing schedule, and that industrial customer moves 5% of its load to the Pilot Program, both GS-4 and real time

[219] Exhibit AJE-20, at 23-24
[220] *Id.*
[221] Virginia Committee Brief at 30-32.
[222] *Id.* at 31.
[223] Virginia Power Brief at 31; Exhibit AJE-20, at 22. One exception is for customers participating under the closed water heater load control program under Rider J. These customers will not be permitted to return to Rider J. *Id.*
[224] Exhibit AJE-20, at 22.
[225] Virginia Power Brief at 31-32.

pricing will be reduced by 5%.[226] Virginia Power describes its proportional proposal as revenue neutral in that it would continue to collect the same average per kWh revenue from customers.[227]

The Virginia Committee asks that the Commission reject Virginia Power's proposed proportional requirements.[228] Instead, the Virginia Committee requests that customers be permitted to designate what portions of their load will be moved to the Pilot Program.[229] Thus, under the above example, the industrial customer could assign all loads moving to the Pilot Program as coming from GS-4. In support of its position, the Virginia Committee argues that § 56-582 A 3 gives customers a statutory right to continue to take service under non-traditional rate schedules.[230] Further, the Virginia Committee contends that Virginia Power's proportional proposal would "frustrate meaningful participation" in the Pilot Program.[231]

I disagree with the Virginia Committee's assessment that § 56-582 A 3 provides a statutory right to non-traditional rates. This section merely caps existing rates. Moreover, even if the Virginia Committee were correct, the fact that Virginia Power's proportional proposal maintains the same average revenue per kWh would tend to avoid any rate cap constraints. Based on the record, I find Virginia Power's proportional proposal to be reasonable and balanced. It provides access to the Pilot Program, is revenue neutral, and maintains the existing revenue relationships between traditional and non-traditional rates.

d. Adjustment to the Fuel Factor

On rebuttal, Virginia Power witness Evans requests a change in the treatment of the fuel factor. Specifically, Mr. Evans asks that during the Pilot Program "any margins received from the sale of power that has been displaced by customers buying from another supplier should not flow through the fuel clause."[232] Mr. Evans argues that such sales do not constitute the sale of excess power, but are required to keep Virginia Power whole.[233]

The Attorney General opposes Virginia Power's request as insufficiently supported and incomplete.[234] In particular, the Attorney General points out that Virginia Power fails to offer a methodology for determining which off-system sales represent the freed-up power, or how those specific margins should be defined and calculated.[235]

I agree with the Attorney General that Virginia Power's requested change in the fuel factor should be deferred until a later time. Little if any record was developed on this issue.

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[226] *Id.*; Evans, Tr. at 309-11; 322-24.
[227] Evans, Tr. at 323.
[228] Virginia Committee Brief at 27-30.
[229] *Id.*
[230] *Id.* at 29-30.
[231] *Id.* at 30.
[232] Exhibit AJE-20, at 36-37.
[233] *Id.* at 37.
[234] Attorney General Brief at 25.
[235] *Id.*

Accordingly, I find that the Commission should direct the parties to address this issue in the context of Virginia Power's next fuel factor proceeding.

e. Resale

Brayden Automation Corporation, Energy Consultants, Inc., and Picus LLC request that the Commission direct Virginia Power to offer third parties the right to resell Virginia Power's service.[236] These parties point to the telecommunications industry as a model.[237]

Unlike in telecommunications, there is an existing wholesale power market. Moreover, transmission and distributions functions have been unbundled to provide open access. These factors should provide competitive energy suppliers with an opportunity to compete for energy sales. Consequently, I find it unnecessary to institute a telecommunications-like resale requirement in Virginia Power's Pilot Program. However, if a competitive retail energy market fails to develop, the Commission or General Assembly may at that time consider more of a resale approach.

f. Funding for Energy Efficiency Programs

Brayden Automation Corporation, Energy Consultants, Inc., and Picus LLC also recommend that the Commission require all participants in the competitive electric industry to use a specified percentage of their revenues to fund energy efficiency programs.[238] Nonetheless, these parties were not able to determine a precise percentage recommendation.[239]

Based on the record of this proceeding, I find that such a recommendation should not be adopted. The Pilot Program should provide everyone with an opportunity to experiment with retail competition. Consideration of whether utilities and competitive suppliers should fund energy efficiency programs may be better analyzed at the conclusion of the Pilot Program.

4. Reporting

Virginia Power proposes to file status reports with the Commission every six months during its Pilot Program.[240] Among other things, Virginia Power proposes to provide the following information:

- Overall customer participation;
- The effectiveness of the Consumer Education Plan;
- Complaints originated by customers;
- Terms offered by competitive suppliers;
- Customers attracted by competitive suppliers;

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[236] Exhibit WDK-11, at Attachment 1 at 4.
[237] *Id.*
[238] *Id.* at Attachment 1 at 1-4.
[239] *Id.*; Kee, Tr. at 122.
[240] Virginia Power Brief at 38-41; Exhibit Company-1, at 87-92.

- Number of advanced meters requested and installed;
- Requests for meter tests by competitive suppliers;
- Competitive supplier requests for non-standard billing service; and
- Data on wholesale scheduling.[241]

In his direct testimony, Staff witness Eichenlaub proposed several additional items for inclusion in Virginia Power's semi-annual reports. These items are as follows:

- Identify the corresponding market share of the participating suppliers and, where available, provide a comparison of market offers;
- Track customers' cost savings on generation;
- Identify disputes or problems among customers or suppliers, including any associated remedies;
- Identify any technical or business systems problems that arise during the pilot; and
- File other information as requested by Staff.[242]

Virginia Power agreed to provide the additional information to the extent "it obtains such data in the normal course of business."[243] Staff witness Eichenlaub concurred with Virginia Power.[244] Accordingly, I find that Virginia Power should provide the additional information requested by Staff in its semi-annual reports to the extent Virginia Power is able to obtain such data in the normal course of business.

FINDINGS AND RECOMMENDATIONS

In conclusion, based on the evidence received in this case, I find that:

(1) Virginia Power's Pilot Program, as modified herein, should be adopted;

(2) The size of the Pilot Program should be adjusted to the level contained in the Stipulation;

(3) The "projected market prices for generation" should be determined following the methodology set forth in the Stipulation and modified to eliminate any adjustments related to Virginia Power's transmission losses, transmission charges, or other ancillary service costs;

(4) As provided in the Stipulation, the "projected market prices for generation" should be determined ninety days prior to the beginning of each phase of the Pilot Program following the methodology adopted by the Commission in this proceeding;

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[241] *Id.*
[242] Exhibit DRE-13, at 7.
[243] Virginia Power Brief at 41.
[244] Eichenlaub, Tr. at 152.

(5) Unbundled transmission rates for the Pilot Program should reflect the FERC OATT. Differences between the FERC OATT and Virginia Power's jurisdictional unbundled transmission cost of service should not be treated as transition costs;

(6) Wires charges should be blocked to mirror the present rate structure;

(7) Competitive metering and billing services should be permitted for only large commercial and industrial customers during the Pilot Program;

(8) The terms and conditions of the Pilot Program should be modified to comply with the rules adopted by the Commission in Case No. PUE980812;

(9) Fees and charges for new services offered under the Pilot Program are not subject to the rate cap provisions of Va. Code § 56-582 A 3;

(10) Customers should not be charged at installation for the removal of advanced meters. Such charges may be collected from customers only upon removal;

(11) Customers should be permitted to self-supply ancillary services as provided under Virginia Power's FERC OATT;

(12) Customers taking service under non-traditional rate schedules should be permitted to participate in the Pilot Program and may return to the non-traditional rate schedule;

(13) Customers that have a portion of their load supplied under a non-traditional rate schedule may move their load proportionally to a competitive supplier during the Pilot Program;

(14) Requested changes in the fuel factor should be deferred and addressed during Virginia Power's next fuel factor filing;

(15) A telecommunications-like resale requirement should not be added to the Pilot Program;

(16) Virginia Power and competitive suppliers should not be required to fund energy efficiency programs during the Pilot Program; and

(17) Virginia Power should track and report on items it has proposed and as requested by Staff to the extent it is able to obtain such data in the normal course of business.

I therefore **RECOMMEND** that the Commission enter an order that:

(1) **ADOPTS** the findings of this Report;

(2) **APPROVES** Virginia Power's Pilot Program as modified herein; and

(3) **DISMISSES** this case from the Commission's docket of active cases and passes the papers herein to the file for ended causes.

COMMENTS

The parties are advised that pursuant to Rule 5:16(e) of the Commission's Rules of Practice and Procedure,[245] any comments to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen copies, within twenty-one (21) days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P. O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document that copies have been mailed or delivered to all other counsel of record and to any party not represented by counsel.

Respectfully submitted,

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Alexander F. Skirpan, Jr.
Hearing Examiner

[245] 5 VAC 5-10-420 F.